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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91176920
Party	Defendant Apex Energetics Apex Energetics 16592 Hale Avenue Irvine, CA 92606
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Date	06/04/2007
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of Application Serial No. 78/842,488
International Class No. 3
For the Mark SKINDURANCE
Published in the *Official Gazette* of October 31, 2006

DURANCE,)	
)	
Opposer,)	
)	
v.)	OPPOSITION NO. 91176920
)	
APEX ENERGETICS CORPORATION,)	
)	
Applicant.)	
)	

APPLICANT'S ANSWER TO OPPOSITION

Apex Energetics Corporation, a California corporation, ("Applicant") respectfully files this Answer to the Notice of Opposition of Durance, a French Société à Responsabilité Limitée ("Opposer") in the above-captioned proceeding, with paragraphs numbered to correspond to those in the Notice of Opposition:

1. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 1, and therefore, denies the same.
2. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 2, and therefore, denies the same.
3. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 3, and therefore, denies the same.
4. Applicant denies the allegations of Paragraph 4.

5. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 5, and therefore, denies the same.

6. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 6, and therefore, denies the same.

7. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 7, and therefore, denies the same.

8. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 8, and therefore, denies the same.

9. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 9, and therefore, denies the same.

10. Applicant denies the allegations of Paragraph 10.

11. Applicant is without sufficient knowledge or information to form a belief as to the truth of the allegations of Paragraph 11, and therefore, denies the same.

12. Applicant denies the allegations of Paragraph 12.

13. Applicant denies the allegations of Paragraph 13.

14. Applicant denies the allegations of Paragraph 14.

15. Applicant admits the allegations of Paragraph 15.

16. Applicant admits the allegations of Paragraph 16.

17. Applicant admits the allegations of Paragraph 17.

18. Applicant denies the allegations of Paragraph 18.

19. Applicant denies the allegations of Paragraph 19.

20. Applicant admits the allegations of Paragraph 20.

21. Applicant denies the allegations of Paragraph 21.

22. Applicant denies the allegations of Paragraph 22.

23. Applicant denies the allegations of Paragraph 23.
24. Applicant denies the allegations of Paragraph 24.
25. Applicant denies the allegations of Paragraph 25.
26. Applicant denies the allegations of Paragraph 26.
27. Applicant denies the allegations of Paragraph 27.
28. Applicant denies the allegations of Paragraph 28.

Further, Applicant also denies that Opposer will be damaged in any way by Applicant's registration or use of the opposed mark.

AFFIRMATIVE DEFENSES

1. There are numerous uses by persons, including corporations, and/or registrations owned by persons, including corporations, in the United States of America of similar marks including the word -DURANCE, or variations thereof, for the same or related Class of goods, which preclude a broad scope of protection and DURANCE is an inherently weak mark so that the use of a common suffix -DURANCE or variations thereof cannot serve to support a holding that the marks as a whole are confusingly similar. Applicant is informed and believes that such other, similar marks incorporating the word "DURANCE" have been and currently are in use.

2. The mark DURANCE is not entitled to a broad scope of protection because it is a weak mark.

3. There is no likelihood of consumer confusion as the mark SKINDURANCE, is not similar in sound, appearance, or meaning to the pleaded mark DURANCE. Moreover, the United States Patent and Trademark Office agrees in that in examining Applicant's application for registration of the mark SKINDURANCE it found no likelihood of confusion and therefore published Applicant's mark for Opposition.

4. There has been no actual confusion.

5. Applicant's products bearing the mark SKINDURANCE are sold in a different manner, and through completely different channels of distribution than are the products of Opposer. In particular, Applicant's product bearing the mark SKINDURANCE is a sun-care preparation sold, in the worst-case scenario, directly to and through healthcare professionals and in the sun-care departments of pharmacies as OTC drugs, while Opposer's product bearing the mark DURANCE is, by Opposer's own definition, a line of cosmetics sold in the cosmetics' sections of stores. To Applicant's knowledge and understanding, Opposer has *never* sold any sun-care products as OTC drugs under the mark DURANCE.

6. As both products are sold through separate channels of distribution and to completely different users, there is little likelihood of confusion.

7. Opposer has acquiesced in various entities, including corporations, obtaining registrations and/or using trademarks in the United States that include the suffix "-DURANCE," which therefore precludes a broad scope of protection for Opposer's mark DURANCE and cannot serve to support a holding that the marks as a whole are confusingly similar.

8. Opposer has unclean hands and therefore is not entitled to any remedy at law or in equity here.

9. Opposer is estopped or otherwise barred from and/or precluded from instituting or maintaining any action or notice of opposition, or acting in any way against the mark SKINDURANCE, by virtue of its actions and conduct.

10. Opposer has waived, is barred by the doctrine of laches, and/or is otherwise precluded from asserting the demands and allegations set forth in its Petition.

11. Based upon the long history of the use of the suffix -DURANCE and the extensiveness of their use, and the descriptive nature of the terms, the word DURANCE is the subject of fair use by Applicant in connection with its mark SKINDURANCE.

12. Applicant is informed and believes, and upon such information and belief alleges, that Opposer has no standing or other rights to bring its Opposition because a third party may have assumed Opposer's rights, if any, to the mark DURANCE.

WHEREFORE, Applicant Apex Energetics Corporation respectfully requests that the Notice of Opposition be dismissed and that its application for registration be allowed to proceed to registration.

This Answer and Designation is filed in triplicate as required by the Trademark Rules of Practice.

Respectfully submitted,

DATED: June 2, 2007.
Principality of Monaco

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of Applicant's Answer To Opposition has been served on counsel for Opposer by mailing, via First Class International AirMail deposited with the post office of the Principality of Monaco, said copy on June 4, 2007, to:

Cathy E. Shore-Sirotn
Lackebach Siegel LLP
One Chase Road
Scarsdale, New York 10583 USA

By _____/S. Tips/_____
S. Tips